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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875 190	06/07/2001	Peter Thomas Kashulines JR.	2280.2480D1	8764

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FITZPATRICK CELLA HARPER & SCINTO  
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NEW YORK, NY 10112

EXAMINER
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NGUYEN, THUKHANH T

ART UNIT	PAPER NUMBER
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1722

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DATE MAILED: 05/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/875,190

Applicant(s)

KASHULINES ET AL.

Examiner

Thu Khanh T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: under the related application section, the status of the Patent Application 09/459,474 should be updated.

Appropriate correction is required.

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Apparatus For Forming Confectionery Product.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Yates et al (5,382,149).

Yates et al teach an cold pressing apparatus for producing food product, comprising a support frame (1), a pair of counter-rotating wheels (26, 28) having a plurality of depressions (30, 32) for forming articles with desired shape, a pair of roller shafts (10, 16) mounting on the support frame (1); each of the rollers being counter-rotated toward each other with the depressions aligned to match with the depressions in the other roller (Fig. 3, 30, 32), a variable speed drive means (2; col. 4, lines 40-43), wherein the rollers include a fluid passage (26A, 28A)

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adjacent to the surface of the rollers, a fluid passage (37, 39) through each of the shafts (10, 16), and a fluid passage (23) within the support frame for circulating the cooling fluid throughout the apparatus system.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yates et al ('149) as applied to claims 10-15 above, and further in view of Beery (4,768,050).

Yates et al disclose a molding apparatus as described above, but fail to disclose that the shafts are flexible and twistable.

Beery discloses a roller pressing apparatus, comprising a pair of counter-rotating rollers (10, 12) wherein the shaft of the roller is flexible as the force applied (col. 3, lines 57-67) to twisting arm (66) to provide uniform loading throughout the working portion of the rollers (col. 4, lines 36-44).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Yates et al by providing a flexible, twistable shaft and as taught by Beery because when the shaft is flexible, the rollers would be able to apply a uniform pressure on the forming article even at very high pressing force.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 703-305-7167. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

TN  
May 9, 2003

  
ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP 19007 222

5/15/03